

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



# W16

**Staff:**  
**Staff Report:**  
**Hearing Date:**

SMR-SF  
May 21, 2004  
June 9, 2004

**FINDINGS FOR  
CEASE AND DESIST AND RESTORATION ORDERS**

**CEASE AND DESIST AND  
RESTORATION ORDERS:**

CCC-04-CD-05 and CCC-04-RO-01

**RELATED VIOLATION FILES:**

V-1-03-014

**PROPERTY LOCATION:**

3870 Cannibal Road,  
Loleta, Humboldt County  
**APNs 310-083-03, 310-083-04 and 310-083-06 (Exhibit 1)**

**DESCRIPTION OF PROPERTY:**

Three parcels of dune-edged pasture land adjacent to and just north of the mouth of the Eel River in Humboldt County.

**PROPERTY OWNER:**

Robert Niles

**VIOLATION DESCRIPTION:**

Unpermitted grading, solid waste disposal and removal of major vegetation.

**SUBSTANTIVE FILE DOCUMENTS:**

Cease and Desist and Restoration Order file Nos. CCC-04-CD-05 and CCC-04-RO-01  
Background Exhibits 1 through 14

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15060 (c)(2) and (3), and Categorically Exempt (CG §§ 15061(b)(2), 15037, 15038 and 15321)

## **I. SUMMARY**

Staff recommends that the Commission approve Cease and Desist and Restoration Orders (as described below) directing Robert Niles (“Niles”) to remove unpermitted development at 3870 Cannibal Road (“subject property”) and to restore the impacted area. The unpermitted development consists of unpermitted grading, solid waste disposal and removal of major vegetation. Solid waste disposed of and discovered on the subject property includes (but is not limited to) household waste, dead cows, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank. Mr. Robert Niles is the owner of the subject property.

The subject property consists of three parcels of land near the mouth of Eel River in Humboldt County, all located in the Coastal Zone and subject to Commission jurisdiction. The southern and western edges of the subject property border on the Eel River and consist of dune habitat, while the remainder of the subject property is farmed for dairy pasture. The unpermitted disposal (which is included as “development” under the Coastal Act as discussed below) is located along the western dune edge of the subject property in a series of pits where solid waste has been buried. The Humboldt County Environmental Health Division first received and investigated reports about the unpermitted activity in the summer of 2003, and organized a multi-agency task force addressing the matter. Commission staff has participated in the task force efforts and is coordinating with County and other agency staff to resolve the violations on the subject property.

The unpermitted development activity that has occurred on the subject property meets the definition of “development” set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

The unpermitted development is also inconsistent with the California Coastal Act, including Sections 30231 (Biological productivity; water quality) 30240 (Environmentally Sensitive Habitat Areas) and 30251 (Scenic Resources and Alteration of Landforms) of the Public Resources Code. The unpermitted development has impacted the habitat values of the subject property, which includes environmentally sensitive dune habitat and is located adjacent to environmentally sensitive estuary habitat at the mouth of the Eel River. This estuary habitat is specifically designated Environmentally Sensitive Habitat Area (ESHA) in the certified Eel River Area Land Use Plan. The impacts from the unpermitted development remain at the subject property. Thus, the unpermitted development on the subject property is causing continuing resource damage, as defined in Section 13190 of the Commission’s regulations. Therefore, the Commission may issue a Restoration Order under Section 30811 of the Coastal Act.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator or his representative may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185, 13186, and 13195, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

## **III. MOTIONS**

Staff recommends that the Commission adopt the following two motions:

### **1.A. Motion**

***I move that the Commission issue Cease and Desist Order No. CCC-04-CD-05 pursuant to the staff recommendation.***

### **1.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **1.C. Resolution to Issue Cease and Desist Order**

The Commission hereby issues Cease and Desist Order number CCC-04-CD-05, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

### **2.A. Motion**

*I move that the Commission issue Restoration Order No. CCC-04-RO-01 pursuant to the staff recommendation.*

### **2.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **2.C. Resolution to Issue Restoration Order**

The Commission hereby issues Restoration Order number CCC-04-RO-01, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

## **IV. PROPOSED FINDINGS**

### **A. History of Violation**

Commission staff first learned of the alleged violation on the subject property on July 29, 2003. North Coast District Commission enforcement staff attended a multi-agency task force meeting on July 30, 2003. The Humboldt County Environmental Health Division had received reports about unpermitted solid waste disposal in an illegal landfill at the subject property ("Site B" in County documents attached as Exhibit 3) and other Code violations at another nearby property that Mr. Niles also owns ("Site A" in County documents attached as Exhibit 3). The Humboldt County Environmental Health Division led the task force meeting, and presented information about the alleged violations at the subject property. County staff visited the subject property in July 2003 and observed an open pit (approximately four feet deep) filled with household waste including milk cartons, paper, plastic, and clothing. County staff also observed several sandy mounds in the immediate area, some of which had sharp pieces of metal sticking out of them and evidently indicating the location of recently buried waste. The County determined that further investigation was necessary and organized a multi-agency task force to address the various health and environmental concerns regarding the violations on the subject property.

The task force executed a criminal search warrant at the subject property on September 15, 2003. The purpose of the search warrant was to locate, map and photograph disposal areas, describe their contents, and segregate and contain any hazardous and medical wastes. The search warrant was not designed for comprehensive abatement and clean-up action. The County excavated ten

pits on the subject property. Solid waste discovered on the subject property during the County investigation includes (but is not limited to) abandoned household waste, dead cows, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank (**Exhibit 2**). Some of the solid waste discovered in this initial investigation, including two car batteries, was deemed hazardous and was removed by Humboldt County Environmental Health Division staff and disposed of off-site. The leaking tank was wrapped in plastic and removed to a concrete pad near the barn on the property for Mr. Niles to dispose of. County staff collected a soil sample from the ground near the leaking tank. The soil was tested for Total Petroleum Hydrocarbons (TPH) and was non-detectable for TPH. After the search warrant was executed, the temporary pits were then backfilled and the solid waste left in place. The development activities associated with the execution of the search warrant were performed pursuant to the emergency permit waiver provisions of Section 30611 of the Coastal Act and Section 13144 of the Commission's regulations. The proposed Commission enforcement actions for the subject property ordering removal of the solid waste from the illegal landfill are for the "Site B" location noted in County documents.

On October 15, 2003, Commission staff received an October 14, 2003 memo and attachments from the Humboldt County Division of Environmental Health (**Exhibit 3**). The complete County file regarding this matter, entitled "Cannibal Island Illegal Disposal Site" is available for review at the Humboldt County Division of Environmental Health, 100 H Street, Suite 100, in Eureka. The memo and its attachments cited County and State Code violations on the subject property ("Site B" location in County documents) and included pit excavation logs and maps and photographs of the site. On December 2, 2003, the Humboldt County Code Enforcement Unit mailed a Notice of Nuisance and Notice to Recover Costs to Mr. Niles (**Exhibit 4**). This notice described the location and nature of the code violations (the "nuisance") on the subject property, and ordered Mr. Niles to abate the nuisance. As of this date, the buried waste remains on the subject property.

On November 14, 2003, the Commission sent a Notice of Intent (NOI) to Commence Cease and Desist Order and Restoration Order Proceedings to Robert Niles (**Exhibit 5**). The NOI stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's January 2004 hearing agenda, and provided the opportunity to respond to allegations in the NOI with a Statement of Defense form.

Mr. Niles did not return the Statement of Defense by the December 5, 2003 deadline set in the NOI. In a letter dated December 8, 2003, Commission staff memorialized a December 5, 2003 telephone conversation with Mr. Niles, in which Mr. Niles indicated that he had not received the NOI until December 1, 2003. In a letter dated December 8, 2003, staff extended the deadline for the submittal of a Statement of Defense to December 19, 2003 (**Exhibit 6**). On December 19, 2003, staff received a request from Mr. Niles' attorney for an extension of the deadline for submittal of a Statement of Defense (**Exhibit 7**). In a letter dated December 23, 2003, staff granted another extension for the deadline to submit a Statement of Defense until January 6, 2004 (**Exhibit 8**). On January 5, 2004, staff received a Statement of Defense dated December 31, 2003, from Mr. Niles' attorney (**Exhibit 9**).

On March 30, 2004, the Commission sent a Notice of Intent (NOI) to Record a Notice of Violation of the Coastal Act to Mr. Niles (**Exhibit 10**). Section 30812 of the Coastal Act provides that if the Commission determines, based on substantial evidence, that a violation has occurred on the subject property, a Notice of Violation can be recorded against the subject property to provide notice to any potential purchasers regarding the presence of the violation. If the property owner objects to the recordation of such a Notice and wishes to present evidence regarding the matter, he must respond to the NOI in writing within 20 days of the postmarked mailing of the NOI. As of April 19, 2004, the Commission had not received a written objection to the recordation of the Notice of Violation. Humboldt County recorded the Notice of Violation on April 26, 2004 as provided for under Section 30812 of the Coastal Act (**Exhibit 11**). On April 28, 2004, staff received a letter from Mr. Niles' attorney stating an objection to the recordation of the Notice of Violation (**Exhibit 12**). Staff spoke with Mr. Niles' attorney on April 28, 2004, and explained that the Notice of Violation had already been recorded pursuant to Section 30812, but that it will be extinguished after the violation on the subject property is resolved. Staff memorialized this conversation in a letter dated April 30, 2004 (**Exhibit 13**).

Since the commencement of formal enforcement proceedings in this matter, Commission staff has discussed the Coastal Act violations on the subject property with Mr. Niles and explained that as the legal property owner, Mr. Niles is responsible for removing the unpermitted development on his property, even if Mr. Niles himself did not deposit the waste on his property. Mr. Niles asserts that others have dumped waste illegally on his property and on adjacent County property. Illegal dumping is an unfortunate problem that is common in many parts of the state, and the County and other agencies are certainly aware of the problem in this specific location. Mr. Niles' apparent response in this case, however (essentially his establishment of an unlicensed landfill)<sup>1</sup>, is not the solution to this problem, and may likely have contributed to continued illegal dumping by others in the area, as abandoned vehicles and other waste simply disappeared from the area when the materials were periodically buried by Niles on the subject property.

When first investigating reports of the illegal waste disposal activities on the subject property, Humboldt County staff received reports that a truck and trailer transported waste from Mr. Niles' nearby residential property at 1111 Cannibal Road to disposal pits on the subject properties at 3870 Cannibal Road, where the waste was then buried in the pits. This indicates that Mr. Niles and/or his employees are aware of and directly responsible for the unpermitted disposal of solid waste on the subject property.

Commission staff has encouraged Mr. Niles to report further incidents of illegal activities by others that occur on his property to local and state officials, and has explained that in instances where individual parties can be identified, the Commission can and will hold individuals responsible for any violations of the Coastal Act that they perform on the subject property. Accordingly, Mr. Niles has reported several incidents to Commission staff since March 2004,

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<sup>1</sup> The Commission notes that there are a number of local, State and federal laws concerning the appropriate disposal of solid and other wastes designed to ensure environmental protection when wastes are disposed of, including requirements for site location and lining of landfills, groundwater monitoring, etc. (see, for example, Resource Conservation and Recovery Act (RCRA), 42 USC 6901, et seq.)

including the abandonment and burning of a stolen truck near an old barn on Mr. Niles' property, and excavation of sand south of the area the County investigated in September 2003. The Commission has opened new files investigating these reports. In addition, County staff recently visited the area to investigate, and confirmed that an area south of the buried waste pits had been recently excavated (**Exhibit 14 map and photos**). It is currently unknown if sand excavation was the only activity here, or if solid waste was also buried in this location. The Commission is therefore including further investigation and possible remediation of this area in the proposed Cease and Desist and Restoration Orders. The Orders would require test pits to be dug in this area, and if any solid waste is discovered it must be removed and the site restored according to the terms of the Orders.

**B. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist and Restoration Order, consists of unpermitted grading, solid waste disposal and removal of major vegetation. Solid waste discovered on the subject property during the County investigation includes (but is not limited to) household waste, dead cows, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank. The grading of pits for waste disposal resulted in the removal of dune vegetation.

**C. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal Act, which states, in relevant part:

*If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*

The development activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

**D. Basis for Issuance of Restoration Order**

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal Act, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that 1) the development has occurred without a coastal development permit from the commission, 2) the development is inconsistent with this division, and 3) the development is causing continuing resource damage.*

## **1. Development Has Occurred Without a Coastal Development Permit**

The unpermitted development activity that is the subject of this Restoration Order is included within the definition of “development” contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, unpermitted grading, solid waste disposal and removal of major vegetation are “development” as defined by Section 30106.

Pursuant to Section 30600(a) of the Coastal Act, “development” requires a coastal development permit. In this case, no coastal development permit has been applied for or issued for the subject unpermitted development.

## **2. Unpermitted Development is Inconsistent with the Coastal Act**

The unpermitted development meets the definition of “development” which requires a Coastal Development Permit (CDP). A CDP may be approved only when development is consistent with the resource protection policies contained in Chapter 3 of the Coastal Act. The unpermitted development is not consistent with Sections 30107.5, 30231, 30240, 30251 and 30253 of the Coastal Act.

### **Environmentally Sensitive Habitat Area**

Section 30107.5 of the Coastal Act states:

*“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Section 30240 of the Coastal Act states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

The subject property is adjacent to the Eel River. The water column and river bottom substrate within the year-round low-flow channel of rivers provide habitat for a wide variety of resident



and migratory fish and wildlife species at all trophic levels, ranging from aquatic macro-invertebrates to mammals. These perennially inundated areas within the river meet the first criterion of the definition of environmentally sensitive area because the inundated areas of the reach may contain rare or endangered species, namely federal- and state-listed salmonids using this reach as a transit corridor between areas of holding habitat prior to the onset of upstream migration. The perennially inundated areas within the river clearly meet the second criterion of the definition of environmentally sensitive area because diking, dewatering, fill, and dredging activities can quickly disturb and degrade the habitat areas. The Commission has previously determined in numerous permit actions that such riverine perennial channels are environmentally sensitive areas. The Commission has consistently conditioned permits for development in and near such channels and along riparian woodlands within streams and rivers to avoid disturbances of aquatic resources.

A portion of the subject property is located within a sand dune area. In many recent decisions, the Commission has considered entire dune areas to be ESHA. Dune systems are a relatively rare feature along the California coastline. In addition, dunes often support rare or threatened plant species and other plant species that are considered to have special value because of their role in supporting the dune system. Because dune systems are dynamic and the extent and location of plant coverage can vary from year to year within the dune system, the Commission has considered entire dune areas to be ESHA, even those portions of the dunes that are not vegetated at any particular time. Because dunes migrate mainly as a result of changes in wind conditions, dunes are not particularly stable and can easily be disturbed by excavation and filling activities. Excavation in a dune can change wind patterns in a manner that can cause increased wind erosion of the remaining portions of the dunes. Placement of fill can act to anchor dunes in a way that interferes with the natural dynamic systems and cause changes in the extent and coverage of the dune area. Therefore, dunes such as those located on the subject property are environmentally sensitive habitat pursuant to Section 30107.5 of the Coastal Act as they are rare and of special value because of their unique nature or role in the ecosystem, and can be easily disturbed or degraded by human activities and developments.

The unpermitted development disrupts the habitat value because dune vegetation was removed to excavate the pits where solid waste was deposited. In addition, the solid waste has been buried in unlined sand pits, and toxic chemicals or compounds capable of degradation in the waste materials in the pits are subject to leaching because of generally high rainfall and high groundwater in the area, and because of potential floods. The subject property is directly adjacent to the mouth of the Eel River, an area that is subject to periodic flooding.

High levels of groundwater, high rainfall and flooding of the river on the subject property may all contribute to the leaching of toxic chemicals or compounds capable of degradation from the solid waste into the environment. The solid waste that is buried on the subject property includes car bodies, engine blocks, and tires, which all contain toxic chemicals that could leach into the surrounding environment, contaminating groundwater and the adjacent river and, in turn, potentially affecting fish, animals and water quality in the area. The solid waste may also become re-exposed at the surface during flood events and may be completely uncovered and washed away as loose debris during larger flood events that periodically occur on the Eel River.

In addition to Sections 30107.5 and 30240 of the Coastal Act, the unpermitted development is also inconsistent with resource protection policies in the Eel River Area Land Use Plan (LUP), which is part of the certified Humboldt County Local Coastal Program.

Section 3.41A of the Eel River Area LUP identifies environmentally sensitive habitats:

*Environmentally sensitive habitats within the Eel River Planning Area include: a) Rivers, creeks, and associated riparian habitats; b) Estuaries, sloughs, and wetlands; c) Rookeries for herons and egrets; d) harbor seal pupping areas; and e) critical habitats for rare or endangered species listed on State or Federal lists.*

The subject property is directly adjacent to the Eel River, forming part of the river's northern boundary at the mouth of the river. Although most of the subject property is farmed for dairy pasture, the dune habitat along the western and southern edges of the property, where the solid waste is buried, is considered ESHA and has been impacted through the unpermitted burial of solid waste. The waste is buried in a series of unlined sand pits adjacent to the Eel River, and may be leaching toxic chemicals or compounds capable of degradation into the groundwater and into the river. This may adversely affect animals in the area, including Chinook, Coho, and Steelhead, federally threatened salmonids that spawn in the Eel River.

Therefore, the unpermitted development is inconsistent with Sections 30107.5 and 30240 of the Coastal Act, and with the Eel River Land Use Plan.

**Biological productivity; water quality**

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

As discussed above, the solid waste that is buried on the subject property includes car bodies, engine blocks, and tires, which all contain toxic chemicals or compounds capable of degradation that could be leaching into the surrounding environment, contaminating groundwater and the adjacent river and, in turn, potentially affecting fish, animals and water quality in the area. Therefore, the Commission finds that the unpermitted development does not maintain the biological productivity and quality of the Eel River Estuary and is not consistent with Section 30231 of the Coastal Act.

### **Scenic Resources and Minimization of Adverse Impacts**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance the visual quality in visually degraded areas.*

Section 30253 of the Coastal Act states:

*New development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

Initial reports regarding the Coastal Act violations on the subject property described pieces of metal sticking out of waste pits, indicating either incomplete burial of some of the waste or exposure of waste after shifting of dune sands. The waste pits are in effect an unpermitted landfill in coastal dunes, which does not minimize alteration of the natural landform and is not in keeping with the protection of scenic and visual qualities of the surrounding area, which is adjacent to a County Park.

The waste pits on the subject property are located in an area that is subject to periodic flooding of the Eel River, and over time these floods may uncover and expose waste near the surface of the disposal pits. The waste could become loose hazardous debris in the environment, and does not minimize risk to life or property.

Therefore, the Commission finds that the unpermitted development is not consistent with Sections 30251 and 30253 of the Coastal Act.

### **3. Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing continuing resource damage, as defined by Section 13190(c) of the Commission's regulations:

*'Continuing', when used to describe 'resource damage', means such damage, which continues to occur as of the date of issuance of the Restoration Order.*

The unpermitted development remains on the subject. As described below, the unpermitted development is causing impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding and damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

Section 13190(a) of the Commission's regulations defines the term "resource" as it is used in Section 30811 of the Coastal Act as follows:

*‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*

The term “damage” in the context of Restoration Order proceedings is provided in Section 13190(b) as follows:

*‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.”*

In this case, the resource damage is the continuing degradation of environmentally sensitive habitat caused by the presence of the unpermitted solid waste, as well as potential chemical and physical degradation and movement through the environment of these materials. The unpermitted development is causing the ongoing adverse impacts to coastal resources that are described in subsection 2 above. As long as the unpermitted development remains on the subject property, these impacts will continue to occur.

**E. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a Cease and Desist Order and Restoration order to compel the removal of the unpermitted development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order and Restoration Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

**F. Allegations**

1. Robert Niles owns the property at 3870 Cannibal Road (APNs 310-083-03, 310-083-04 and 310-083-06). The violations on the subject property are located in designated ESHA in the Eel River Planning Area of Humboldt County.
2. Unpermitted grading, solid waste disposal and removal of major vegetation have occurred on the subject property.
3. No coastal development permit has been applied for nor obtained for the unpermitted development.
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.

5. The unpermitted development is inconsistent with Chapter 3 policies of the Coastal Act, including Sections 30107.5, 30231, 30240, 30251 and 30253.
6. The unpermitted development is causing continuing resource damage.

#### **G. Violators' Defenses and Commission's Response**

Mr. Niles' attorney submitted a Statement of Defense (SOD) with attached letter dated December 31, 2003 on behalf of Mr. Niles, which was received by the Commission staff on January 5, 2004, and is included as **Exhibit 9**. The following paragraphs summarize the defenses contained in the Statement of Defense and set forth the Commission's response to each defense.

##### **Mr. Niles' Defense:**

1. **"Car bodies, trash, and misc. garbage items have been buried on subject property over the last 50 years. All car bodies, garbage, trash and misc. junk was on the subject property, and was deposited there by members of the public who have access to that area. The area involved is open to the public. Mr. Niles has attempted to fence off the problem area, and has constructed many fences to surround the area. The fences are always torn down by drug users [sic] and others who frequent that area for "parties". Trespasses onto Niles property continue to take place to this date and will probably continue to take place in the future. The persons who trespass onto the Niles property leave garbage, old cars, and old appliances on the Niles' property and in the County Park area as well."**

##### **Commission's Response:**

Mr. Niles asserts that trespassers deposited the solid waste on the subject property. Staff acknowledges that illegal dumping of waste occurs and has occurred on the subject property. Since notifying Mr. Niles of the Commission's proposal to issue Cease and Desist and Restoration Orders in this matter, Mr. Niles has reported several incidents of illegal activities on the subject property to County and Commission staff, including the abandonment and burning of a truck trailer and a large quantity of household garbage near the County Park, the abandonment and burning of a stolen truck near an old barn on Mr. Niles' property, and the excavation of sand south of the area the County investigated in September 2003. The solid waste that is the subject of the proposed enforcement Orders, however, was not left scattered on the land surface throughout the subject property wherever it was originally deposited. The waste has been systematically buried in a series of pits in a specific location on Mr. Niles' property (**Exhibit 3**).

When first investigating reports of the illegal waste disposal activities on the subject property, Humboldt County staff received reports that a truck and trailer transported waste from Mr. Niles' nearby residential property at 1111 Cannibal Road to disposal pits on the subject properties at 3870 Cannibal Road, where the waste was then buried in the pits. This indicates that Mr. Niles and/or his employees are aware of and responsible for the unpermitted disposal of solid waste on the subject property.

Even if some of the buried waste on the subject property was deposited there by a previous owner, Mr. Niles is liable for actions of previous owners who may have created the public nuisances on the subject property based on Civil Code 3483, which states:

*Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.*

In addition, in *(Leslie Salt Co. v. San Francisco Bay Conservation etc. Com. (1984) 153 Cal. App.3d 605, 618)*, the court held that:

*“whether the context be civil or criminal, liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner’s active responsibility for [that] condition of his land...or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question.”*

### **Mr. Niles’ Defense:**

- 2. “Garbage left by others on subject property was buried by Robert Niles’ employees at the request of Calif. Dept. of Fish and Game employees in an effort to clean-up the County Park known as Crab Park, which is open to the public.”**

### **Commission’s Response:**

Mr. Niles asserts that California Department of Fish and Game staff requested that his employees move garbage from Crab Park and bury it on the subject properties that Mr. Niles owns, which are adjacent to and just south of Humboldt County Crab Park (**see Exhibit 1, page 2**). Mr. Niles has provided no additional information, such as names of staff, to verify this assertion.

The California Department of Fish and Game does not own Crab Park or maintain the property. Moreover, the Department has no authority to direct private citizens to dispose of waste in the manner described by Mr. Niles. The mission of the California Department of Fish and Game is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. The Department of Fish and Game maintains native fish, wildlife, plant species and natural communities for their intrinsic and ecological value and their benefits to people. This includes habitat protection and maintenance in a sufficient amount and quality to ensure the survival of all species and natural communities. The department is also responsible for the diversified use of fish and wildlife including recreational, commercial, scientific and educational uses. They are not charged with solid waste management or regulation of solid waste disposal.

In addition, staff in the Eureka office of the State Department of Fish and Game are active participants in the multi-agency task force organized by Humboldt County to investigate and resolve the multiple environmental and health code violations on the subject property. They have

indicated that Department of Fish and Game employees did not direct Mr. Niles to bury solid waste in pits on the subject property.

**Mr. Niles' Defense:**

3. **“Mr. Niles denies that any car bodies, garbage, old appliances, and other items of garbage left on Niles property were placed and/or buried on said property by Robert Niles or any of his employees. Robert Niles or any of his employees have never buried any of their own garbage and/or abandoned vehicles on the Niles’ property or on the Humboldt County property known as “Crab Park”. Robert Niles does admit to burying 5 or 6 dead cows on his own land in the last few years since the local tallow company has closed down. The Humboldt County Dept. of Agriculture was contacted and proper instructions were received and followed as to how to bury the dead cows.”**

**Commission's Response:**

Mr. Niles denies that he or any of his employees placed or buried solid waste on the subject property, but in his statement quoted in Defense No. 2 above, Mr. Niles states that his employees buried garbage on the subject property. As previously discussed, Humboldt County staff received reports that a truck and trailer transported waste from Mr. Niles’ nearby residential property at 1111 Cannibal Road to disposal pits on the subject property at 3870 Cannibal Road, where waste was then buried.

The County’s investigation of the subject property in September 2003 revealed a variety of solid waste, including household waste, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank, as well as a number of cow bodies. Mr. Niles admits he buried several dead cows on the subject property. All of the waste is buried in the same general location on the subject property, spread over an area of approximately 300 square feet (**Exhibit 3**); in Pit N10, cow bodies are interspersed with other solid waste. Staff does not believe that Mr. Niles could be unaware of the solid waste in the area, given its close proximity to and in some cases burial in the same pits as the cows that he has admitted burying on the subject property.

The Commission staff has not asserted here that Mr. Niles or his employees buried anything on the Humboldt County property known as “Crab Park.” Any such disposal, if any, is not the subject of the proposed Orders, which address specifically materials placed on property owned by Mr. Niles. Regardless of who placed the solid waste on the subject property, the persistence of the unpermitted development remains a continuing violation of the Coastal Act and a continuing public nuisance that the owner of the property is liable for correcting.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders:

## **CEASE AND DESIST ORDER CCC-04-CD-05**

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby orders and authorizes Robert Niles, his agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as “Respondents”) to cease and desist from engaging in any further development on the subject property, including but not limited to disposal of solid waste in pits, unless authorized pursuant to the Coastal Act, and to remove the unpermitted material as set forth below.

## **RESTORATION ORDER CCC-04-RO-01**

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission hereby orders and authorizes the Respondents to restore the subject property as described below. Accordingly, the Coastal Commission hereby authorizes and orders the following:

- A. Within 60 days of issuance of this Restoration Order, Respondents shall submit for the review and approval of the Executive Director of the Commission a Removal and Restoration Plan (“Plan”). The Plan shall be prepared by a certified engineering geologist, civil engineer, or other similar professional licensed in the State of California. Respondents shall at the same time submit a second copy of this Plan to the attention of the Humboldt County Environmental Health Division. In preparing the Plan, Respondents shall refer to County files regarding this matter to obtain maps and descriptions of the location of the buried waste on the subject property. Respondents shall contact the Humboldt County Division of Environmental Health Local Enforcement Agency (LEA) Program Manager, 100 H Street, Suite 100 in Eureka, and schedule times for removal of the buried waste during normal business hours on weekdays (9 a.m. to 5 p.m., Monday through Friday) so that County staff can observe the removal process. The Plan shall outline the excavation and removal of all waste in areas where previous inspections and investigations disclosed that waste was present on the subject property. The Plan shall include excavation of three new test pits at the site on the subject property where sand extraction was reported in April 2004 to determine whether any solid waste was buried in this location. The Plan shall include and discuss the following elements:
1. A description of the equipment that will be used for excavation and removal of the waste.
  2. A description of the licensed facility outside Coastal Zone (appropriate for the type of waste being disposed of) where the waste will be transported for disposal.
  3. A proposed series of dates and times for performing the removal work. Respondents will finalize a work schedule after contacting County staff as described above, to determine dates when County staff can be present at the subject property to observe the removal work, and provide notice of the schedule to the Coastal Commission.



4. A monitoring element to check regrowth of dune vegetation in excavated/impacted areas in Summer 2005 (after one rainy season). Respondents shall submit Summer 2005 photographs of site to Commission staff **no later than September 30, 2005** to document regrowth of any impacted dune vegetation.
  5. A provision that all work to be performed under this Order shall be done in compliance with all applicable laws.
- B. Within 30 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph A:
1. Excavate and remove the waste from the pits where Humboldt County has confirmed the presence of buried solid waste on the subject property (**Exhibit 3, page 4**). Respondents shall carefully remove and reserve dune vegetation where excavation is required and shall reserve upper layers of clean sand from excavated pits. Any soil within the pits that appears to be contaminated from car bodies or other solid waste shall be completely excavated, contained and treated as hazardous waste for disposal. If any unidentified and potentially hazardous waste is discovered during removal that is of a type other than the kinds of solid waste previously found by the County during the search warrant (for example, an unlabeled fluid-filled barrel that may contain unknown hazardous chemicals), work shall be halted until a certified Hazardous Materials (HazMat) specialist can be consulted and brought to the site to direct proper removal and disposal procedures.
  2. Excavate three test pits at the site on the subject property where sand extraction was reported in April 2004 (**Exhibit 14, page 1, area labeled "Excavation"**) to determine whether any solid waste was buried in this location. Remove any solid waste that is found at this site according to the terms of this Order. If additional evidence of buried waste in other locations on the subject property is discovered during the excavation and removal work carried out under these Orders, excavate and remove such waste according to the terms of the Orders.
  3. Backfill all excavated pits after the removal of all solid waste with clean soil and clean sand and restore the natural contours of the site. Replant any vegetation that was removed during excavation in the top layer of backfilled sand.
  4. Remove all excavated waste to an appropriate, licensed disposal site located outside of the Coastal Zone. Should the disposal site be located in the Coastal Zone, a coastal development permit shall be required. Obtain receipts verifying the waste disposal and include this information in the report discussed below.
  5. Submit to the Executive Director of the Commission and Humboldt County Environmental Health Division a report documenting the restoration of the subject

property. This report shall include a summary of dates when work was performed and photographs that show the excavation and removal of the solid waste on the subject property, as well as photographs of any replanted dune vegetation at individual excavation sites. The report shall include copies of receipts verifying disposal of the solid waste at the licensed disposal site. Respondents shall submit this report to the Commission and Humboldt County **no later than October 29, 2004**.

6. Submit to the Executive Director a report with photographs taken in Summer 2005 documenting regrowth of the dune vegetation in impacted/excavated areas after one rainy season. Respondents shall submit this report to the Commission **no later than September 30, 2005**.
7. Addresses for report submittals:

California Coastal Commission, Attn: Sheila Ryan  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Humboldt County Division of Environmental Health, Attn: LEA Program Manager  
100 H Street, Suite 100  
Eureka CA 95501

### **I. Persons Subject to the Orders**

Robert Niles, and his agents, contractors and employees, and any persons acting in concert with any of the foregoing.

### **II. Identification of the Property**

The property that is subject to the orders is described as follows:

Three lots at 3870 Cannibal Road, Loleta, Humboldt County, Assessor's Parcel Numbers 310-083-03, 310-083-04 and 310-083-06.

### **III. Description of Unpermitted Development**

The development that is the subject of the Cease and Desist and Restoration Orders consists of unpermitted grading, solid waste disposal and removal of major vegetation. Solid waste discovered on the subject property during Humboldt County's September 2003 site investigation includes (but is not limited to) household waste, dead cows, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank.

#### **IV. Effective Date and Terms of the Orders**

The effective date of the Orders is the date of their approval by the Commission. The Orders shall remain in effect permanently unless and until modified or rescinded by the Commission.

#### **V. Findings**

The Orders are issued on the basis of the findings adopted by the Commission at the June 2004 hearing, as set forth in the attached document entitled "Findings for Cease and Desist Order CCC-04-CD-05 and Restoration Order CCC-04-RO-01".

#### **VI. Compliance Obligation**

Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders including any deadline contained in the orders will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

#### **VII. Deadlines**

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

#### **VIII. Appeal**

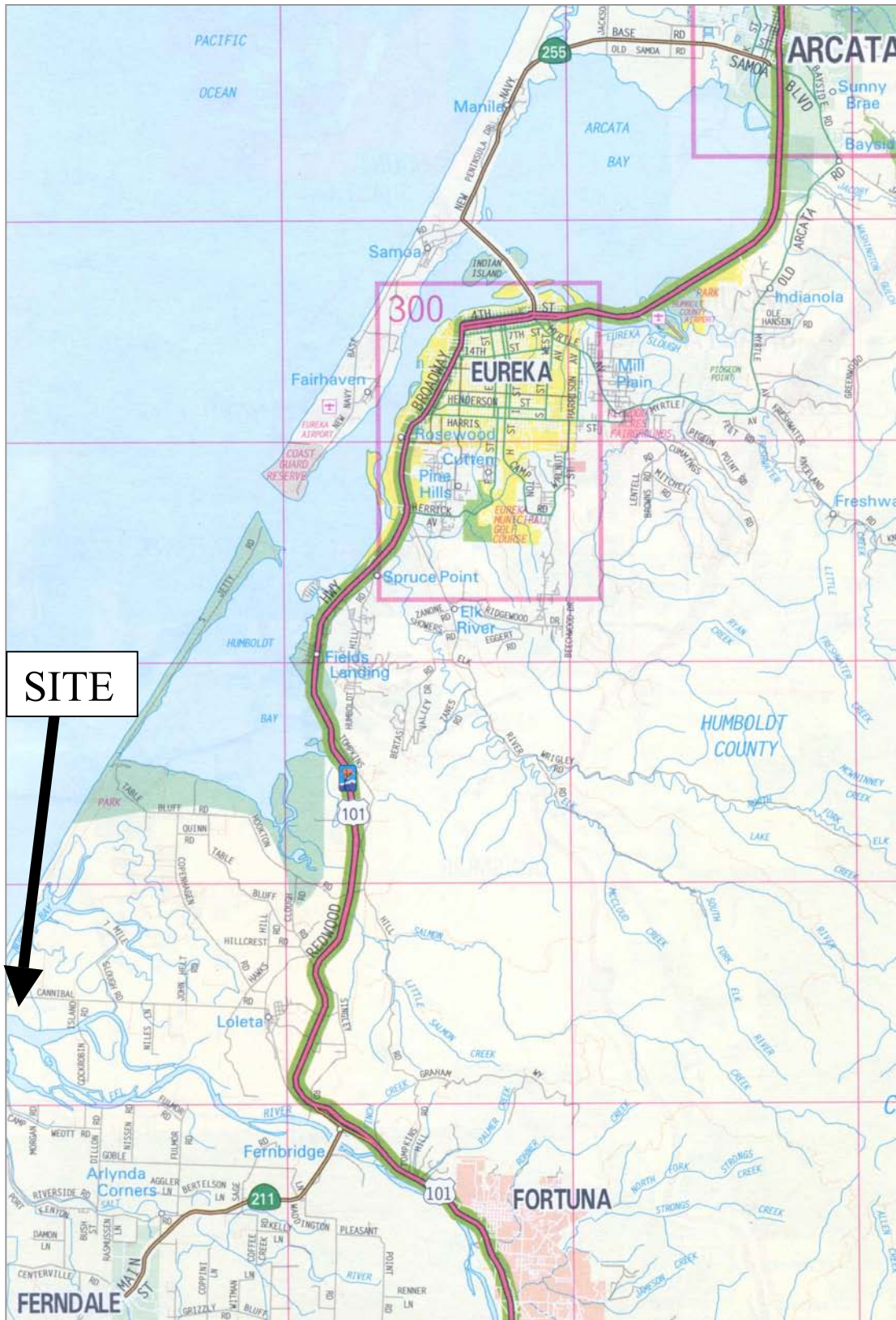
Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the orders are issued may file a petition with the Superior Court for a stay of this order.

Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

## **Exhibits**

1. Site Map and Location.
2. Site photographs.
3. October 14, 2003 memo and attachments from the Humboldt County Division of Environmental Health.
4. Notice of Nuisance and Notice to Recover Costs dated December 2, 2003, from the Humboldt County Code Enforcement Unit to Mr. Niles.
5. Notice of Intent (NOI) to Commence Cease and Desist Order and Restoration Order Proceedings dated November 14, 2003.
6. Letter dated December 19, 2003 from Commission staff to Mr. Niles.
7. Letter dated December 19, 2003, from Mr. Niles' attorney to Commission staff, requesting an extension of the deadline for submittal of a Statement of Defense.
8. Letter dated December 23, 2003, from Commission staff to Mr. Niles.
9. Statement of Defense dated December 31, 2003, from Mr. Niles' attorney, received by Commission staff on January 5, 2004.
10. Notice of Intent (NOI) to record a violation of the Coastal Act dated March 30, 2004.
11. Notice of Violation recorded on April 26, 2004.
12. Letter dated April 28, 2004 from Mr. Niles' attorney to Commission staff, stating an objection to the recordation of the Notice of Violation.
13. Letter dated letter dated April 30, 2004 from Commission staff to Mr. Niles' attorney.
14. Map and photos of April 2, 2004 County site visit regarding reports of sand extraction on the subject property.



**Exhibit 1. Area location map.**

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**Exhibit 2a.** Photograph of household waste in burial pit on subject property.



**Exhibit 2b.** Two batteries (battery on left was leaking) discovered during County search warrant at subject property on September 15, 2003.





**Exhibit 2c.** Photograph of car body on subject property.



**Exhibit 2d.** Photograph of truck trailer on subject property.





**Exhibit 2e.** Photograph of engine block and tires on subject property.



**Exhibit 2f.** Photograph of cracked empty plastic buckets labeled "Transmission Oil".